

IN THE SENATE

SENATE BILL NO. 1124

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO JUVENILE CORRECTIONS; AMENDING SECTION 20-507, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING SECTION 20-511, IDAHO CODE, TO PROVIDE THAT CERTAIN FILES AND REFERENCES SHALL BE SEALED UPON COMPLETION OF DIVERSION; AND AMENDING SECTION 20-525A, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE THAT A JUVENILE MAY PETITION FOR SEALING RECORDS FOR A CERTAIN MISDEMEANOR, TO PROVIDE A CODE REFERENCE, TO PROVIDE FOR AN ORDER OF SEALING RECORDS ON A CHARGE INVOLVING A STATUS OFFENSE, TO REMOVE REFERENCE TO A HEARING, TO PROVIDE FOR SEALING RECORDS WHERE THE JUVENILE IS FOUND NOT TO HAVE COMMITTED AN OFFENSE, TO REVISE PROVISIONS RELATING TO CRIMES FOR WHICH A COURT MAY NOT SEAL A JUVENILE'S RECORD, TO REVISE PROVISIONS RELATING TO THE PROCESS OF DETERMINING IF RECORDS SHALL BE SEALED, TO REVISE PROVISIONS RELATING TO WHICH RECORDS SHALL BE SEALED, TO PROVIDE THAT ONLY CERTAIN PERSONS MAY VIEW THE SPECIAL INDEX OF THE SEALING PROCEEDINGS, TO PROVIDE FOR INQUIRIES INTO A SEALED JUVENILE RECORD, TO PROVIDE THAT ONLY CERTAIN PERSONS MAY VIEW THE RECORDS OF A JUVENILE WHOSE RECORD WAS SEALED, TO PROVIDE NOTICE OF THE RIGHT TO SEAL RECORDS TO CERTAIN INDIVIDUALS AND TO DEFINE A TERM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 20-507, Idaho Code, be, and the same is hereby amended to read as follows:

20-507. RETENTION OF JURISDICTION. Jurisdiction obtained by the court in the case of a juvenile offender shall be retained by it for the purposes of this act until he becomes twenty-one (21) years of age, unless terminated prior thereto. If a juvenile offender under the jurisdiction of the court and after attaining eighteen (18) years of age, is charged with a felony, he shall be treated as any other adult offender. If a person eighteen (18) years of age or older already under court jurisdiction is convicted of a felony, that conviction shall terminate the jurisdiction of the court, provided however, nothing herein contained shall prohibit any court from proceeding as provided in section 20-508(2) or 20-525A, Idaho Code.

SECTION 2. That Section 20-511, Idaho Code, be, and the same is hereby amended to read as follows:

20-511. DIVERSION OR INFORMAL DISPOSITION OF THE PETITION. (1) Prior to the filing of any petition under this act, the prosecuting attorney may request a preliminary inquiry from the county probation officer to determine whether the interest of the public or the juvenile requires a formal court proceeding. If court action is not required, the prosecuting attorney may utilize the diversion process and refer the case directly to the county probation officer or a community-based diversion program for informal pro-

bation and counseling. If the diversion process is utilized pursuant to this subsection, then statements made by a juvenile in a diversion proceeding shall be inadmissible at an adjudicative proceeding on the underlying charge as substantive evidence of guilt. If community service is going to be utilized pursuant to this subsection, the prosecuting attorney shall collect a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile is going to perform and remit the fee to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile offender performing community service. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required. Upon completion of the diversion, all prosecutor and diversion program files and references to the case shall be sealed and not made available for public inspection unless ordered to do so by a court of competent jurisdiction.

(2) After the petition has been filed and where, at the admission or denial hearing, the juvenile offender admits to the allegations contained in the petition, the court may decide to make an informal adjustment of the petition. Informal adjustment includes, but is not limited to:

- (a) Reprimand of the juvenile offender;
- (b) Informal supervision with the probation department;
- (c) Community service work;
- (d) Restitution to the victim;
- (e) Participation in a community-based diversion program.

(3) The court may dismiss the case upon an application by the juvenile offender if:

- (a) An informal adjustment has been granted and the juvenile offender has satisfied the terms or conditions of the informal adjustment;
- (b) The court is convinced by the showing made that there is no longer cause for continuing the period of informal adjustment; and
- (c) It be compatible with the public interest.

(4) Information uniquely identifying the juvenile offender, the offense, and the type of program utilized shall be forwarded to the department. This information shall be maintained by the department in a statewide juvenile offender information system. Access to the information shall be controlled by the department, subject to the provisions of section 9-342, Idaho Code.

(5) Such informal adjustment of the petition shall be conducted in the manner prescribed by the Idaho juvenile rules. When an informal adjustment is made pursuant to this section and the juvenile offender is to perform community service work, the court shall assess the juvenile offender a fee of sixty cents (60¢) per hour for each hour of community service work the juvenile offender is to perform. This fee shall be remitted by the court to the state insurance fund for the purpose of securing worker's compensation insurance for the juvenile offender performing community service. However, if a county is self-insured and provides worker's compensation insurance for persons performing community service pursuant to the provisions of this chapter, then remittance to the state insurance fund is not required.

SECTION 3. That Section 20-525A, Idaho Code, be, and the same is hereby amended to read as follows:

20-525A. ~~EXPUNGEMENT~~ SEALING OF RECORD -- HEARING -- FINDINGS NECESSARY -- SPECIAL INDEX -- EFFECT OF ORDER. (1) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a felony offense, having committed a misdemeanor that resulted in great bodily harm, permanent disability or permanent disfigurement, or having been committed to the department of juvenile corrections may, after the expiration of ~~five~~ three (53) years from the date of termination of the continuing jurisdiction of the court pursuant to section 20-507, Idaho Code, or, in case the juvenile offender was committed to the juvenile correctional center, ~~five~~ three (53) years from the date of his release from the juvenile correctional center, or after reaching age eighteen (18) years, whichever occurs last, petition the court for the ~~expungement~~ sealing of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and of the date of the hearing. ~~The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.~~

(2) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a misdemeanor or status offenses, except for a misdemeanor that resulted in great bodily harm, permanent disability or permanent disfigurement, only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs ~~later~~ last, petition the court for the ~~expungement~~ sealing of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. ~~The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.~~

(3) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a status offense shall have his record status offense sealed by the court upon the juvenile offender turning eighteen (18) years of age without the necessity of a petition being filed or a hearing conducted.

(4) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs ~~later~~ last, petition the court for the ~~expungement~~ sealing of his record. Upon the filing of the petition, the court shall set a date for a hearing and shall notify the prosecuting attorney of the pendency of the petition and the date of the hearing. ~~The prosecuting attorney and any other person who may have relevant information about the petitioner may testify at the hearing.~~

(5) The court shall immediately seal any juvenile offense in a juvenile case when the offense is dismissed after an evidentiary hearing where the juvenile is not found to have committed the offense.

(46) The court may not ~~expunge a conviction~~ seal the record of a juvenile offender found to be within the purview of this act for any of the following crimes ~~from a juvenile offender's record~~:

- (a) Administering poison with intent to kill (18-4014, Idaho Code);
- (b) Aggravated battery (18-907, Idaho Code);
- (c) Armed robbery (chapter 65, title 18, Idaho Code);
- (d) Arson (chapter 8, title 18, Idaho Code);
- (e) Assault with intent to commit a serious felony (18-909, Idaho Code);
- (f) Assault with intent to murder (18-4015, Idaho Code);
- (g) Assault or battery upon certain personnel, felony (18-915, Idaho Code);
- (h) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);
- (i) Infamous crime against nature, committed by force or violence (18-6605, Idaho Code);
- (j) Injury to child, felony (18-1501, Idaho Code);
- (k) Kidnapping (18-4501, Idaho Code);
- (l) Murder of any degree (18-4001 and 18-4003, Idaho Code);
- (m) Rape, excluding statutory rape (18-6101 and 18-6108, Idaho Code);
- (n) Ritualized abuse of a child (18-1506A, Idaho Code);
- (o) Sexual exploitation of a child (18-1507, Idaho Code);
- (p) Unlawful use of destructive device or bomb (18-3320, Idaho Code);
- (q) Voluntary manslaughter (18-4006 1., Idaho Code);
- (r) A violation of the provisions of section 37-2732(a) (1) (A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school; or
- (s) A violation of the provisions of section 37-2732B, Idaho Code, related to drug trafficking or manufacturing of illegal drugs.

(57) The court shall conduct a hearing, unless otherwise stipulated, on petitions to seal the records of a juvenile offender. If at the hearing the court finds after hearing determines that:

- (a) The petitioner has not been adjudicated as a juvenile offender for any of the crimes identified in subsection (46) of this section, and;
- (b) The petitioner has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or his release from the juvenile correctional center, and that;
- (c) No proceeding involving such felony or misdemeanor is pending or being instituted against him, and;
- (d) The petitioner is not registered on the juvenile or adult sex offender registry or the prosecutor stipulates that he will not seek to have the juvenile register on the adult sex offender registry;
- (e) if the court further finds to its satisfaction that, the petitioner has been held accountable, and is developing life skills necessary to become a contributing member of the community and that;

1 (f) ~~The expungement~~ sealing of the petitioner's record will not com-
 2 promise public safety, ~~it~~; and

3 (g) Any court ordered restitution in the case has been paid or converted
 4 to a civil judgment pursuant to section 19-5305, Idaho Code;
 5 the court shall order all records in the petitioner's case in the custody of
 6 the court and all ~~such~~ records, including law enforcement investigatory re-
 7 ports and fingerprint records, in the custody of any other agency or offi-
 8 cial involving the charges in the petitioner's case sealed; and. The court
 9 shall ~~further also~~ order all references to ~~said the~~ adjudication, diversion
 10 or informal adjustment removed from all indices and made unavailable from
 11 all other records otherwise available to the public.

12 (8) ~~However, a~~ special index of the ~~expungement~~ sealing proceedings
 13 and records shall be kept by the court ordering ~~expungement, which the~~
 14 records sealed. The special index shall not be available to the public and
 15 shall be revealed only upon order of a court of competent jurisdiction or to
 16 a presentence investigator of the Idaho department of correction, a pros-
 17 ecuting attorney or a public or private attorney representing a juvenile
 18 offender or criminal defendant upon written request directed to the court.

19 (9) Copies of the sealing order shall be sent to each agency or offi-
 20 cial named in the order. Upon the entry of the order the proceedings in the
 21 petitioner's case shall be deemed never to have occurred ~~and the petitioner~~
 22 ~~may properly reply accordingly upon any inquiry in the matter.~~ Provided how-
 23 ever, if the petitioner is charged with the commission of a felony after the
 24 sealing of the record, the record may be used as provided by law in the felony
 25 criminal proceeding.

26 (10) After the sealing order is entered the petitioner may properly re-
 27 ply if an inquiry is made about their juvenile court record that they have
 28 none.

29 (11) Inspection of the records may thereafter be permitted only by the
 30 court upon petition showing good cause by the person who is the subject of the
 31 records ~~or by any other court of competent jurisdiction, and only to persons~~
 32 ~~named in the petition,~~ a presentence investigator of the Idaho department of
 33 correction, or a prosecuting attorney or a public or private attorney repre-
 34 senting a juvenile offender or criminal defendant for use in a felony crimi-
 35 nal proceeding against the petitioner for a crime committed after the juve-
 36 nile record is sealed pursuant to the provisions of this section.

37 (12) At the conclusion of any sentencing hearing under section 20-520,
 38 Idaho Code, or upon the completion of a diversion or informal adjustment pur-
 39 suant to section 20-510 or 20-511, Idaho Code, the juvenile and his parents
 40 or guardian shall be notified of the statutory right to have the juvenile
 41 case or diversion expunged pursuant to this chapter.

42 (13) For purposes of this section, "sealing" shall have the same meaning
 43 as "expungement" as defined by the common law.